IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION NO. 4294/1995

HOTILAL Vs. THE JUDGE, LABOUR COURT, BHARATPUR & ORS.

Date: 11.12.2006.

HON'BLE MR. K.S. RATHORE, J.

Mr. S.K. Singodiya for the petitioner.
Mr. B.S. Chhaba, Addl. GA for the State.

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The petitioner was appointed in July, 1984 and worked up to October, 1985 and thereafter by verbal order of the Assistant Engineer, his services were terminated w.e.f. 01.11.85. The termination order has been challenged before the Tribunal and the reference has been made to the Labour Court, Bharatpur in following terms:-

> "क्या अधिशाषी अभियन्ता/ सहायक अभियन्ता, पी.डब्ल्यू.डी. (बी. एण्ड आर) खण्ड भरतपुर द्वारा श्री होतीलाल पुत्र कुन्दनलाल की सेवा मुक्ति उचित एवं वैध है? यदि नहीं तो श्रमिक क्या राहत पाने का अधिकारी है?"

The main grievance of the petitioner is that merely because the petitioner has not produced any evidence and he has not conducted cross-examination,

thus, was not able to satisfy the Labour Court that he has worked more than 240 days.

The petitioner in support of his submissions referred the judgment rendered by the Division Bench of this Court in the case of ***Divisional Forest Officer Vs. Ram Kalyan & Anr., decided on 21.11.2005 and reported in 2006(2) WLC(Raj.) 61,*** wherein the Division Bench has held that application for setting aside exparte award maintainable even after publication of Award in Gazette and the case was remanded to the Labour Court to decide the application for setting aside Award.

Here in the instant case also, it is not disputed that the Award is notified but this Award is not ex parte Award and challenged on the ground that the petitioner has not been given proper liberty to adduce the evidence and cross-examination, therefore, he prayed that the matter may be remanded back to the Labour Court. He moved application before the Labour Court on 21.09.94 under Rule 22 of the Rajasthan Industrial Disputes Act. In Rule 22, it is made clear that if without sufficient cause being shown, any party to proceeding before a Board, court, Labour Court, Tribunal, National Tribunal or arbitrator fails to attend or to be represented, the Board, court, Labour Court, Tribunal, National Tribunal or arbitrator may

proceed, as if the party had duly attended or had been represented.

This application under Rule 22 has been rejected by the Labour Court vide impugned order dated 29.05.95 stating therein that they have no power to review the Award.

Having considered the rival submissions, in the interest of justice, I deem it proper to remand the matter back to the Labour Court as the petitioner is able to show that similarly situated persons are given the benefit, whereas on this ground that he failed to produce any evidence and cross examination evidence adduced on behalf of the employer, the Award has been passed. Thus, the Labour Court is directed to consider the matter afresh after affording opportunity of being heard to the petitioner and shall pass fresh Award. The impugned Award dated 21.09.94 is quashed and set-aside.

With these observations, the writ petition stands disposed of.

(K.S. RATHORE),J.

/KKC/